Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.10 OF 2007

Kamladevi Ramlakhan Singh & Anr. ...Appellants
V/s.
Kalyani Vidyadhar Sarode & Ors. ...Respondents

Mr.S.G. Deshmukh, Advocate, for the Appellants.

Ms.Vaidehi Mhaispurkar, Advocate, for Respondent No.1.

Mr.Singh, Advocate, i/b. Vyas & Bhalwal, for Respondent No.2.

Mr.S.U. Kamdar, Advocate, i/b. Mr.Ramadasan K.V., for Respondent No.4.

CORAM : ABHAY S. OKA, J.
DATE : 1ST NOVEMBER, 2007.

P.C.:

1. Heard the learned Advocate appearing for the appellants. The appellants are the original plaintiffs. The appellants have taken an exception to order dated 31st August, 2006 passed by the learned Trial Judge by which application at Exhibit-5 made by the appellants has been rejected.

2. The appellants claim to be the owners of the suit property. The Suit filed by the appellants is inter-alia for declaration that the respondents-defendants have no right, authority or

power to develop the suit property and construct the buildings thereon and that they are the trespassers upon the suit property.

3. The second prayer is for declaration that the agreements entered into by and between the plaintiffs and 2nd and 4th respondents-defendants are void and are not enforceable in law as the same are obtained by misrepresentation and deceitful means.

4. The learned Advocate for the appellants submitted that the 1st defendant was never inducted by the appellants in the suit property and the 1st defendant has no authority to carry out the development work. He submitted that the 4th defendant had no authority to appoint the 1st defendant as developer in view of clause No.15 of the power of attorney executed by the appellants in favour of the 4th defendant which enjoins the 4th defendant to take prior permission of the appellants before selling the suit property and before executing the development agreement. He submitted that there is no material on record to show that the entire consideration payable under the agreement has been paid by the 4th defendant.

5. He submitted that when the appellants who were the owners of the property have filed a suit for possession, the Trial Court ought to have granted injunction protecting the rights of the plaintiffs-appellants by restraining the respondents from carrying out further construction and from creating third party interests. I also heard the learned Counsel appearing for the contesting respondents.

6. I carefully considered the submissions. In the Suit filed on 21st June, 2005, till today neither the Trial Court nor this Court in the present Appeal has granted any ad-interim relief in favour of the plaintiffs/appellants. There is a material on record to show that the plaintiffs executed a development agreement dated 3rd October, 1997 in favour of the 4th defendant and also executed a power of attorney in favour of the 4th defendant.

7. It appears that the 1st defendant/1st respondent is carrying out construction on the suit property. The case made out by the 1st defendant is that construction has been already carried out and third party interests have been already created.

8. The perusal of the plaint shows that the plaintiffs/appellants have not terminated the development agreement dated 3rd October, 1977 executed in favour of the 4th respondent. There is material on record to show that the 4th defendant was put in possession of the suit property by the appellants. The possession receipt filed on record prima-facie records that the 4th defendant was placed in possession by the appellants with an authority to deal with the tenants. In the agreement executed by the appellants in favour of the 4th respondent, prima-facie, there does not appear to be any prohibition against the 4th respondent allowing someone else on her behalf to develop the property as the said agreement had not been terminated.

9. The construction work has progressed and according to 1st defendant, third party interests have been created in favour of flat purchasers. Considering all the aforesaid aspects, it is not possible to interfere with the discretionary order passed by the Trial Court declining to grant relief of temporary injunction. Since the Suit for possession filed by the plaintiffs/appellants is pending, it is obvious that all actions of the defendants are subject to final outcome of the Suit.

10. Subject to what is stated above, no case is made out for interference. Appeal is accordingly dismissed. It is made clear that the Trial Court will decide the Suit finally without being influenced by the tentative findings in the impugned order as well as the prima-facie findings recorded in this order. All contentions of the parties on merits of the pending Suit are expressly kept open.

11. Hearing of the suit is expedited.

[ABHAY S. OKA, J.]